

House Amendment 1585

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1 1 Amend House File 500 as follows:
1 2 #1. Page 1, by inserting after line 10 the
1 3 following:
1 4 <Sec. _____. NEW SECTION. 536.30 PURPOSE.
1 5 It is the policy of this state and the purpose of
1 6 this division to provide consumer protection against
1 7 abusive lending practices by motor vehicle equity line
1 8 of credit lenders and to provide for a sound system of
1 9 the business of providing motor vehicle equity lines
1 10 of credit under open-ended credit by providing for the
1 11 licensing of motor vehicle equity line of credit
1 12 lenders by the superintendent.
1 13 Sec. _____. NEW SECTION. 536.31 DEFINITIONS.
1 14 As used in this division, unless the context
1 15 otherwise requires:
1 16 1. "Borrower" means the person obligated to repay
1 17 the loan obligation under a motor vehicle equity line
1 18 of credit agreement.
1 19 2. "Control" means possession, direct or indirect,
1 20 of the power to direct or cause the direction of
1 21 management and policies of an entity whether through
1 22 the ownership of voting securities by contract or
1 23 otherwise; provided, that a person shall not be deemed
1 24 to control an entity solely on account of being a
1 25 director, officer, or employee of such entity.
1 26 For purposes of this subsection, a person who,
1 27 directly or indirectly, owns, controls, holds the
1 28 power to vote, or holds proxies representing twenty=
1 29 five percent or more of the then outstanding voting
1 30 securities issued by an entity is presumed to control
1 31 such entity.
1 32 For purposes of this subsection, the superintendent
1 33 may determine whether a person, in fact, controls an
1 34 entity.
1 35 3. "Controlling person" means any person in
1 36 control of a motor vehicle equity line of credit
1 37 lender.
1 38 4. "Lender" means a motor vehicle equity line of
1 39 credit lender.
1 40 5. "Motor vehicle" means any automobile,
1 41 motorcycle, mobile home, truck, van, or other vehicle
1 42 operated on public highways and streets.
1 43 6. "Motor vehicle equity line of credit agreement"
1 44 means an agreement under which a lender does all of
1 45 the following:
1 46 a. Extends an open-end credit plan or loan to a
1 47 consumer that is secured by an interest in a motor
1 48 vehicle.
1 49 b. Imposes interest on the outstanding balance of
1 50 the credit plan or loan.
2 1 c. Reasonably contemplates repeated transactions.
2 2 d. Provides an amount of credit that may be
2 3 extended up to any limit set by the lender that is
2 4 generally available to the borrower to the extent that
2 5 any outstanding balance is repaid.
2 6 7. "Motor vehicle equity line of credit lender"
2 7 means a person engaged in the business of making motor
2 8 vehicle equity line of credit agreements with
2 9 borrowers.
2 10 8. "Motor vehicle equity line of credit office"
2 11 means the location at which a motor vehicle equity
2 12 line of credit lender regularly conducts business.
2 13 9. "Superintendent" means the superintendent of
2 14 banking.
2 15 Sec. _____. NEW SECTION. 536.32 LICENSE REQUIRED.
2 16 1. A person shall not engage in the business of
2 17 motor vehicle equity line of credit lending without
2 18 having first obtained a license from the
2 19 superintendent under this division. A separate
2 20 license shall be required for each motor vehicle
2 21 equity line of credit office from which such business
2 22 is conducted.
2 23 2. Any motor vehicle equity line of credit
2 24 agreement made without first having obtained a license

2 25 is void and the person making the agreement forfeits
2 26 the right to collect any moneys, including principal,
2 27 interest, and any other fee paid by the borrower in
2 28 connection with the agreement. The person making the
2 29 agreement shall return to the borrower the titled
2 30 motor vehicle, or the fair market value of such motor
2 31 vehicle, and all principal, interest, and any other
2 32 fees paid by the borrower.

2 33 Sec. _____. NEW SECTION. 536.33 AUTHORITY OF
2 34 LICENSED MOTOR VEHICLE EQUITY LINE OF CREDIT LENDERS.

2 35 1. A motor vehicle equity line of credit lender
2 36 licensed pursuant to this division has the power to
2 37 make motor vehicle equity line of credit agreements in
2 38 accordance with the provisions of this division.

2 39 2. A motor vehicle equity line of credit lender
2 40 licensed pursuant to this division shall not have the
2 41 powers enumerated in this division unless the motor
2 42 vehicle equity line of credit agreement complies with
2 43 section 536.38. A motor vehicle equity line of credit
2 44 lender exercising any of the powers in compliance with
2 45 this division shall not be deemed in violation of any
2 46 usury law.

2 47 Sec. _____. NEW SECTION. 536.34 ELIGIBILITY
2 48 REQUIREMENTS FOR LICENSE == APPLICATIONS == ISSUANCE
2 49 OF LICENSE.

2 50 1. To qualify for a license under this division,
3 1 an applicant shall satisfy all of the following
3 2 requirements:

3 3 a. The applicant has a tangible net worth of not
3 4 less than seventy-five thousand dollars for each motor
3 5 vehicle equity line of credit office.

3 6 b. The financial responsibility, financial
3 7 condition, business experience, character, and general
3 8 fitness of the applicant shall reasonably warrant the
3 9 belief that the applicant's business will be conducted
3 10 lawfully. In determining whether the requirements of
3 11 this paragraph have been met, and for the purpose of
3 12 investigating compliance with this division, the
3 13 superintendent may review and approve all of the
3 14 following:

3 15 (1) The relevant business records and the capital
3 16 adequacy of the applicant.

3 17 (2) The financial responsibility, financial
3 18 condition, business experience, character, and general
3 19 fitness of any person who is a director, officer, or
3 20 five percent or more shareholder of the applicant, or
3 21 owns or controls the applicant.

3 22 (3) Any adjudication against the applicant or any
3 23 person referred to in subparagraph (2) of any criminal
3 24 activity, any fraud or other act of personal
3 25 dishonesty, or any act, omission, or practice which
3 26 constitutes a breach of a fiduciary duty.

3 27 2. The requirements set forth in subsection 1 are
3 28 continuing in nature.

3 29 3. Each application for a license shall be in
3 30 writing and under oath to the superintendent, in a
3 31 form prescribed by the superintendent, and shall
3 32 include all of the following information:

3 33 a. The legal name, residence and business address
3 34 of the applicant and, if the applicant is an entity,
3 35 of every member, partner, officer, managing employee,
3 36 director, trustee, and person who controls the entity.

3 37 b. The address where the registered agent of the
3 38 applicant shall be located, if any.

3 39 c. Other data and information the superintendent
3 40 may reasonably require with respect to the applicant,
3 41 its directors, trustees, officers, members, partners,
3 42 managing employees, or controlling persons.

3 43 d. A copy of each document or form to be used in
3 44 providing a motor vehicle equity line of credit
3 45 agreement.

3 46 4. Each application for a license shall be
3 47 accompanied by all of the following:

3 48 a. A filing fee, in an amount prescribed by the
3 49 superintendent by rule but not to exceed one thousand
3 50 dollars, which shall not be subject to refund but
4 1 which, if the license is granted, shall constitute the
4 2 license fee for the first license year or part
4 3 thereof.

4 4 b. An accounting balance sheet for the immediately
4 5 preceding fiscal year prepared in accordance with

4 6 generally accepted accounting principles.
4 7 c. A surety bond in the principal sum of twenty=
4 8 five thousand dollars per motor vehicle equity line of
4 9 credit office. The bond shall be in a form
4 10 satisfactory to the superintendent and shall be issued
4 11 by a bonding company or insurance company authorized
4 12 to do business in this state. The bond shall cover
4 13 the performance of the obligations of the applicant
4 14 and the applicant's agents in connection with loan
4 15 activities under this division. An applicant or
4 16 licensee may, in lieu of filing a bond, provide the
4 17 superintendent with an irrevocable letter of credit in
4 18 the amount of twenty=five thousand dollars per motor
4 19 vehicle equity line of credit office, issued by any
4 20 bank, trust company, savings and loan association, or
4 21 credit union operating in this state in a form
4 22 acceptable to the superintendent.

4 23 5. Upon the filing of an application in a form
4 24 prescribed by the superintendent, accompanied by the
4 25 fee and documents required in this section, the
4 26 superintendent shall investigate to ascertain whether
4 27 the qualifications prescribed by this section have
4 28 been satisfied. If the superintendent finds that the
4 29 qualifications have been satisfied, the superintendent
4 30 shall issue to the applicant a license to engage in
4 31 the motor vehicle equity line of credit lending
4 32 business in this state.

4 33 6. If the superintendent determines that an
4 34 applicant is not qualified to receive a license, the
4 35 superintendent shall notify the applicant in writing
4 36 that the application has been denied, stating the
4 37 basis for denial. If the superintendent denies an
4 38 application, or if the superintendent fails to act on
4 39 an application within ninety days after the filing of
4 40 a properly completed application, the applicant may
4 41 make written demand to the superintendent for a
4 42 hearing before the superintendent on the question of
4 43 whether the license should be granted. Any hearing
4 44 shall be conducted pursuant to the provisions of
4 45 chapter 17A. A decision of the superintendent
4 46 following any hearing on the denial of license is
4 47 subject to review under chapter 17A.

4 48 7. A license shall be required for each motor
4 49 vehicle equity line of credit office in this state.
4 50 The license shall be conspicuously posted at each
5 1 motor vehicle equity line of credit office of the
5 2 licensee.

5 3 8. A license is not transferable or assignable
5 4 except as allowed by rule of the superintendent.

5 5 9. A license issued pursuant to this section shall
5 6 expire each year on May 31, unless the licensee
5 7 submits a timely renewal application, or unless
5 8 earlier surrendered, suspended, or revoked pursuant to
5 9 this division. Each license may be renewed upon
5 10 application by the license holder, submitted at least
5 11 thirty days prior to the renewal date, showing
5 12 continued compliance with the requirements of this
5 13 section and the payment to the superintendent of the
5 14 annual license fee in an amount prescribed by the
5 15 superintendent by rule but not to exceed one thousand
5 16 dollars for each licensed motor vehicle equity line of
5 17 credit office in this state.

5 18 10. The superintendent may establish a biennial
5 19 licensing arrangement for the filing of the
5 20 application for license renewal but the license fee
5 21 shall not be payable for more than one year at a time.

5 22 Sec. ____ NEW SECTION. 536.35 NOTICE OF CHANGE
5 23 IN CONTROL AND PRINCIPAL PLACE OF BUSINESS.

5 24 1. Except when a change of control is beyond the
5 25 control of the motor vehicle equity line of credit
5 26 lender, or in the case of an emergency as determined
5 27 by the superintendent, a change in control of a motor
5 28 vehicle equity line of credit lender shall require
5 29 fifteen days prior written notice to the
5 30 superintendent. In the case of a publicly traded
5 31 corporation, such notification shall be made in
5 32 writing within thirty days of the change or
5 33 acquisition of control of the motor vehicle equity
5 34 line of credit lender.

5 35 2. Upon notification of a change in control, the
5 36 superintendent may require such information as deemed

5 37 necessary to determine whether to approve a new
5 38 controlling person. The superintendent may disapprove
5 39 the new person for any reason the superintendent could
5 40 deny a license. If the superintendent disapproves any
5 41 person, the superintendent shall allow a reasonable
5 42 time for the licensee to remove such person as
5 43 controlling person.

5 44 3. Costs incurred by the superintendent in
5 45 investigating a change of control notification shall
5 46 be paid by the person requesting such approval.

5 47 4. Whenever control of a motor vehicle equity line
5 48 of credit lender is acquired or exercised in violation
5 49 of this division, the licensee of the motor vehicle
5 50 equity line of credit lender may be subject to

6 1 penalties under section 536.45.

6 2 5. Each motor vehicle equity line of credit lender
6 3 shall notify the superintendent fifteen days prior to
6 4 any change in the principal place of business of a
6 5 motor vehicle equity line of credit lender, except in
6 6 a case of an emergency as defined by the
6 7 superintendent.

6 8 Sec. _____. NEW SECTION. 536.36 REPORTING
6 9 REQUIREMENTS.

6 10 1. Within fifteen days of the occurrence of any of
6 11 the events listed below, a motor vehicle equity line
6 12 of credit lender shall file a written report with the
6 13 superintendent describing such event and the expected
6 14 impact on the activities of the motor vehicle equity
6 15 line of credit lender in this state:

6 16 a. The filing for bankruptcy or reorganization by
6 17 the motor vehicle equity line of credit lender.

6 18 b. Any felony indictment or conviction of the
6 19 motor vehicle equity line of credit lender or any of
6 20 its officers, directors, or controlling persons.

6 21 2. Each motor vehicle equity line of credit lender
6 22 shall file a report with the superintendent by May 1
6 23 after being licensed pursuant to this division and
6 24 every odd-numbered year thereafter, containing the
6 25 following information:

6 26 a. The names and addresses of all controlling
6 27 persons of the motor vehicle equity line of credit
6 28 lender.

6 29 b. Accounting balance sheets as required by the
6 30 superintendent.

6 31 c. If the motor vehicle equity line of credit
6 32 lender is a corporation, the names and addresses of
6 33 its officers and directors; if the motor vehicle
6 34 equity line of credit lender is a partnership, the
6 35 names and addresses of the partners; and if the motor
6 36 vehicle equity line of credit lender is a limited
6 37 liability company, the names and addresses of the
6 38 members of the limited liability company; or if the
6 39 motor vehicle equity line of credit lender is any
6 40 other form of entity, the names and addresses of all
6 41 persons who generally manage or control the business.

6 42 d. If the motor vehicle equity line of credit
6 43 lender holds two or more licenses or is affiliated
6 44 with other motor vehicle equity line of credit
6 45 lenders, a composite report may be filed.

6 46 3. All reports required under this section shall
6 47 be filed in such form as may reasonably be required by
6 48 the superintendent and shall be sworn to by a
6 49 responsible officer of the motor vehicle equity line
6 50 of credit lender.

7 1 4. The information submitted by motor vehicle
7 2 equity line of credit lenders pursuant to this section
7 3 shall be confidential and shall not be considered
7 4 public records under chapter 22. However, the
7 5 superintendent is authorized to disclose information
7 6 obtained pursuant to the authority granted under this
7 7 division to any local, state, or federal agency as the
7 8 superintendent deems necessary.

7 9 Sec. _____. NEW SECTION. 536.37 RECORDS OF
7 10 AGREEMENTS == RELEASE OF LIENS.

7 11 1. Every motor vehicle equity line of credit
7 12 lender shall keep a numbered record of each and every
7 13 motor vehicle equity line of credit agreement executed
7 14 by the motor vehicle equity line of credit lender and
7 15 a borrower. Such record, as well as the motor vehicle
7 16 equity line of credit agreement, shall include the
7 17 following information:

7 18 a. The make, model, and year of the motor vehicle
7 19 provided as security under the agreement.
7 20 b. The vehicle identification number, or other
7 21 comparable identification number, along with the motor
7 22 vehicle registration plate number, if applicable, of
7 23 the motor vehicle.

7 24 c. The name, residential address, and date of
7 25 birth.

7 26 d. The date the motor vehicle equity line of
7 27 credit agreement is executed by the motor vehicle
7 28 equity line of credit lender and the borrower.

7 29 2. The motor vehicle equity line of credit lender
7 30 shall release any lien obtained pursuant to a motor
7 31 vehicle equity line of credit agreement immediately
7 32 upon full cash payment of the amount due under the
7 33 agreement by the borrower and shall release any lien
7 34 upon the clearance of any other form of payment from
7 35 the financial institution issuing the payment in any
7 36 form other than cash.

7 37 Sec. ____ NEW SECTION. 536.38 AGREEMENT
7 38 REQUIREMENTS.

7 39 1. All of the following information shall be
7 40 printed on a motor vehicle equity line of credit
7 41 agreement:

7 42 a. The name and physical address of the motor
7 43 vehicle equity line of credit lender and office.

7 44 b. In not less than fourteen point bold type, the
7 45 name and address of the superintendent as well as a
7 46 toll-free telephone number of the motor vehicle equity
7 47 line of credit lender to which consumers may address
7 48 complaints.

7 49 c. The following statement in not less than
7 50 fourteen point bold type:

8 1 "THIS LOAN IS NOT INTENDED TO MEET LONG-TERM
8 2 FINANCIAL NEEDS. YOU SHOULD USE THIS LOAN ONLY TO
8 3 MEET SHORT-TERM CASH NEEDS. INTEREST WILL CONTINUE TO
8 4 ACCRUE AS LONG AS THERE IS A BALANCE OUTSTANDING.
8 5 THIS LOAN IS A HIGHER-INTEREST RATE LOAN. YOU ARE
8 6 PLACING AT RISK YOUR CONTINUED OWNERSHIP OF THE MOTOR
8 7 VEHICLE YOU ARE PROVIDING AS SECURITY FOR THIS LOAN.
8 8 IF YOU FAIL TO REPAY THE LOAN IN ACCORDANCE WITH THE
8 9 TERMS OF THE AGREEMENT, THE LENDER MAY TAKE POSSESSION
8 10 OF THE MOTOR VEHICLE AND SELL IT IN THE MANNER
8 11 PROVIDED BY LAW. YOU HAVE A LEGAL RIGHT OF REVISION.
8 12 THIS MEANS YOU MAY CANCEL YOUR AGREEMENT AT NO COST TO
8 13 YOU BY RETURNING THE ORIGINAL CHECK OR CASH YOU
8 14 BORROWED BY THE NEXT BUSINESS DAY AFTER THE DATE OF
8 15 YOUR LOAN."

8 16 d. The following statement:

8 17 "The borrower represents and warrants, to the best
8 18 of the borrower's knowledge, that the motor vehicle is
8 19 not stolen and has no liens or encumbrances against
8 20 it, the borrower has the right to enter into this
8 21 transaction, and the borrower will not apply for a
8 22 duplicate certificate of title while the motor vehicle
8 23 equity line of credit agreement is in effect."

8 24 e. In not less than fourteen point type, or in
8 25 accordance with federal truth-in-lending requirements,
8 26 the annual percentage rate, method of computing the
8 27 balance and calculating finance charges, and any other
8 28 information required by federal truth-in-lending laws.

8 29 f. An explanation of how interest is calculated,
8 30 when the payments are due, how payments are to be
8 31 applied, and what forms of payment are acceptable.

8 32 g. A disclosure of all fees charged by the lender
8 33 that are associated with opening the account.

8 34 2. The motor vehicle equity line of credit lender
8 35 shall provide in writing, as an additional disclosure
8 36 on a separate form, for each advance, the annual
8 37 percentage rate, the amount of interest charged on a
8 38 daily basis and the amount of interest charged in a
8 39 thirty-day period, and shall have the borrower sign
8 40 the form and initial acceptance of the interest rates.

8 41 3. The borrower shall sign the motor vehicle
8 42 equity line of credit agreement, shall sign or initial
8 43 all other loan documents, shall be provided with a
8 44 copy of such agreement and all other loan documents,
8 45 and shall acknowledge in writing receipt of copies of
8 46 the documents. The motor vehicle equity line of
8 47 credit agreement shall also be signed by the motor
8 48 vehicle equity line of credit lender's employee or

8 49 agent. Each signature shall be accompanied by the
8 50 date and time of signing.

9 1 4. A borrower may cancel a motor vehicle equity
9 2 line of credit agreement without cost by returning the
9 3 full principal amount borrowed in the form of the
9 4 original loan check or cash to the motor vehicle
9 5 equity line of credit lender within twenty-four hours
9 6 after signing an agreement pursuant to subsection 2.

9 7 Sec. ____ NEW SECTION. 536.39 FEES AND CHARGES
9 8 == DISCLOSURE FORM.

9 9 1. The motor vehicle equity line of credit lender
9 10 may contract for and receive interest at the rate the
9 11 parties agree to in writing.

9 12 2. A motor vehicle equity line of credit lender
9 13 may assess and collect from a borrower amounts paid to
9 14 a governmental agency to record the lender's lien on
9 15 the certificate of title to the motor vehicle provided
9 16 as security under a motor vehicle equity line of
9 17 credit agreement, and amounts paid to independent
9 18 third parties to repossess and sell the motor vehicle.

9 19 3. In accordance with chapter 17A, the
9 20 superintendent shall adopt rules requiring each motor
9 21 vehicle equity line of credit lender to issue a
9 22 standardized consumer notification and disclosure form
9 23 in compliance with federal truth-in-lending laws prior
9 24 to entering into any motor vehicle equity line of
9 25 credit agreement. The required style, content, and
9 26 method of executing the form shall be prescribed by
9 27 rule and shall be designed to ensure that the
9 28 borrower, prior to entering into such agreement,
9 29 receives and acknowledges an accurate and complete
9 30 notification and disclosure of the itemized and total
9 31 amounts of all interest, fees, charges, and other
9 32 costs that will or potentially could be imposed as a
9 33 result of such agreement.

9 34 4. The motor vehicle equity line of credit lender
9 35 shall post in a conspicuous manner the disclosure
9 36 required in section 536.38, subsection 1, paragraph
9 37 "c". The posting shall be on a sign that is at least
9 38 three feet wide by three feet high. The motor vehicle
9 39 equity line of credit lender shall also post in a
9 40 conspicuous manner the toll-free telephone number
9 41 required by section 536.38, subsection 1, paragraph
9 42 "b".

9 43 Sec. ____ NEW SECTION. 536.40 RIGHT TO REDEEM.

9 44 Except as otherwise provided in this division, a
9 45 borrower, upon presentation of suitable
9 46 identification, shall be entitled to redeem the motor
9 47 vehicle provided as security under the motor vehicle
9 48 equity line of credit agreement or certificate of
9 49 title described therein upon satisfaction of all
9 50 outstanding obligations pursuant to the motor vehicle
10 1 equity line of credit agreement.

10 2 Sec. ____ NEW SECTION. 536.41 MANDATORY
10 3 PRINCIPAL REDUCTION PAYMENT.

10 4 1. For each payment period under a motor vehicle
10 5 equity line of credit agreement, the borrower shall be
10 6 required to make a principal reduction payment in an
10 7 amount equal to at least ten percent of the principal
10 8 outstanding on the motor vehicle equity line of credit
10 9 agreement as of the last payment date in addition to
10 10 the lien fee and fees associated with repossession and
10 11 sale.

10 12 2. Interest authorized by this division at each
10 13 successive billing cycle shall be calculated on the
10 14 outstanding principal balance.

10 15 3. Payments in excess of a principal reduction
10 16 payment shall be credited to the outstanding principal
10 17 on the day received. If on a payment date, the
10 18 borrower has not made previous principal reduction
10 19 payments adequate to satisfy the current required
10 20 principal reduction payment, and the borrower cannot
10 21 repay at least ten percent of the principal balance
10 22 outstanding as of the billing date and any outstanding
10 23 interest and fees authorized by this division, the
10 24 motor vehicle equity line of credit lender may, but
10 25 shall not be obligated to, defer any required
10 26 principal payment, but shall not charge additional
10 27 interest or fees on the principal amount deferred.

10 28 4. The motor vehicle equity line of credit lender
10 29 shall send a monthly billing statement to the borrower

10 30 until the total amount owed by the borrower is paid in
10 31 full or the lender closes the borrower's account.
10 32 Sec. ____ NEW SECTION. 536.42 DEFAULT ==
10 33 REPOSSESSION AND SALE == RIGHT TO REDEEM.
10 34 1. The motor vehicle equity line of credit lender
10 35 may declare a default pursuant to the requirements of
10 36 section 537.5109.
10 37 2. Prior to serving a notice to cure default, the
10 38 motor vehicle equity line of credit lender shall
10 39 attempt to contact the borrower by telephone or
10 40 certified mail to warn the borrower of the default by
10 41 the borrower, and shall keep a record of all written
10 42 correspondence.
10 43 3. Prior to taking possession of the motor
10 44 vehicle, the motor vehicle equity line of credit
10 45 lender shall mail a notice to cure default to the
10 46 borrower pursuant to the requirements of sections
10 47 537.5110 and 537.5111. If the motor vehicle used to
10 48 secure the line of credit is the only motor vehicle in
10 49 the borrower's household, the motor vehicle equity
10 50 line of credit lender shall allow the borrower at
11 1 least thirty days to cure the default.
11 2 4. If the borrower does not cure the default
11 3 within the time provided in the notice to cure, the
11 4 motor vehicle equity line of credit lender may
11 5 repossess the motor vehicle pursuant to the motor
11 6 vehicle equity line of credit agreement and in
11 7 compliance with chapter 554, article 9, part 6.
11 8 However, prior to repossessing the motor vehicle, the
11 9 lender shall afford the borrower an opportunity to
11 10 make the motor vehicle available to the lender at a
11 11 place, date, and time reasonably convenient to the
11 12 lender and the borrower. In taking possession, the
11 13 motor vehicle equity line of credit lender, or the
11 14 lender's agent or independent contractor, may proceed
11 15 without judicial process if repossession can be
11 16 accomplished without breach of the peace, or the
11 17 lender may proceed by action to obtain judicial
11 18 process. After the lender, agent, or independent
11 19 contractor takes possession of the motor vehicle, the
11 20 lender shall without charge require that any personal
11 21 belongings left within the motor vehicle are removed,
11 22 inventoried, and made available to the borrower for at
11 23 least fifteen days after the written notice of right
11 24 to redemption is sent to the borrower.
11 25 5. There shall be no further interest charged to
11 26 the borrower after repossession of the motor vehicle.
11 27 6. After repossession, the motor vehicle equity
11 28 line of credit lender shall mail a notice of right to
11 29 redeem to the borrower, notifying the borrower that
11 30 the borrower must redeem the certificate of title to
11 31 the motor vehicle within ten days by paying all
11 32 outstanding principal, interest, and fees authorized
11 33 by this division owed by the borrower to the motor
11 34 vehicle equity line of credit lender, plus all
11 35 repossession charges and informing the borrower where
11 36 and how to recover personal belongings left in the
11 37 vehicle. If the borrower exercises the right of
11 38 redemption, the borrower shall be given possession of
11 39 the motor vehicle and the certificate of title without
11 40 further charge. If the borrower fails to redeem the
11 41 motor vehicle, the motor vehicle equity line of credit
11 42 lender shall proceed to sell the motor vehicle.
11 43 7. The motor vehicle equity line of credit lender
11 44 shall sell the motor vehicle in a commercially
11 45 reasonable manner and in compliance with chapter 554,
11 46 article 9, part 6. The proceeds of the sale shall be
11 47 applied to the principal, interest, and all fees
11 48 authorized by this division owed by the borrower to
11 49 the motor vehicle equity line of credit lender,
11 50 including the actual repossession costs and cost of
12 1 the sale. Any surplus from the sale of the motor
12 2 vehicle shall be remitted to the borrower after such
12 3 sale and shall not be retained by the motor vehicle
12 4 equity line of credit lender.
12 5 8. Upon voluntary surrender of the motor vehicle,
12 6 the motor vehicle equity line of credit lender shall
12 7 send a notice to cure default or notice of right to
12 8 redeem to the borrower.
12 9 Sec. ____ NEW SECTION. 536.43 PROHIBITED
12 10 ACTIONS.

12 11 A motor vehicle equity line of credit lender shall
12 12 not do any of the following:

- 12 13 1. Enter into a motor vehicle equity line of
12 14 credit agreement with a person less than eighteen
12 15 years of age or a person who appears to be intoxicated
12 16 or under the influence of a controlled substance.
- 12 17 2. Enter into a motor vehicle equity line of
12 18 credit agreement without first considering the
12 19 applicant's household income and ability to repay the
12 20 loan, obtaining a statement of indebtedness from the
12 21 applicant, and requiring the applicant to disclose
12 22 whether the motor vehicle being used to secure the
12 23 line of credit is the only motor vehicle in the
12 24 applicant's household.
- 12 25 3. Charge any hidden fees.
- 12 26 4. Make any agreement giving the motor vehicle
12 27 equity line of credit lender any recourse against the
12 28 borrower other than the motor vehicle equity line of
12 29 credit lender's right to take possession of the motor
12 30 vehicle and certificate of title upon the borrower's
12 31 default or failure to redeem, and to sell or otherwise
12 32 dispose of the motor vehicle in accordance with the
12 33 provisions of this division, except where the borrower
12 34 prevented repossession of the vehicle, damaged the
12 35 vehicle, or committed fraud.
- 12 36 5. Enter into a motor vehicle equity line of
12 37 credit agreement in which the amount of money loaned,
12 38 when combined with the outstanding balance of other
12 39 outstanding motor vehicle equity line of credit
12 40 agreements the borrower has with the same lender
12 41 secured by any single certificate of title, exceeds
12 42 seven thousand five hundred dollars.
- 12 43 6. Accept any waiver, in writing or otherwise, of
12 44 any right or protection accorded a borrower under this
12 45 division.
- 12 46 7. Fail to exercise reasonable care to protect
12 47 from loss or damage the certificate of title in the
12 48 physical possession of the motor vehicle equity line
12 49 of credit lender.
- 12 50 8. Purchase a motor vehicle that was repossessed
13 1 in the operation of the lender's business.
- 13 2 9. Maintain more than one motor vehicle equity
13 3 line of credit office for each motor vehicle equity
13 4 line of credit lender under each license, provided,
13 5 however, any such motor vehicle equity line of credit
13 6 lender may move a motor vehicle equity line of credit
13 7 office as provided in this division.
- 13 8 10. Enter into a motor vehicle equity line of
13 9 credit agreement unless the borrower presents a clear
13 10 title to the motor vehicle at the time that the loan
13 11 is made, and such title is retained in the physical
13 12 possession of the motor vehicle equity line of credit
13 13 lender. If the motor vehicle equity line of credit
13 14 lender files a lien against such motor vehicle without
13 15 possession of a clear title to the motor vehicle, the
13 16 resulting lien shall be void.
- 13 17 11. Capitalize or add any accrued interest to the
13 18 principal not otherwise allowed under this division,
13 19 charge interest on interest, or charge interest in
13 20 excess of the number of days the loan is outstanding.
- 13 21 12. Sell or otherwise charge for any type of
13 22 insurance, membership, or other product in connection
13 23 with a motor vehicle equity line of credit agreement.
- 13 24 13. Charge a prepayment penalty or late fee.
- 13 25 14. Require a borrower to provide any additional
13 26 guaranty as a condition to entering into a motor
13 27 vehicle equity line of credit agreement.
- 13 28 15. Refuse to provide a receipt when payment is
13 29 made.
- 13 30 16. Charge interest for more than one year on any
13 31 advance on the line of credit.
- 13 32 17. Make multiple loans or engage in loan layering
13 33 on the same motor vehicle, provided that this
13 34 subsection shall not prohibit a motor vehicle equity
13 35 line of credit lender from making a subsequent advance
13 36 on an existing line of credit, or from increasing a
13 37 borrower's credit limit.
- 13 38 18. Hire an employee involved in the loan process
13 39 without requiring the employee to submit to a criminal
13 40 background check, drug screening, and credit check.
- 13 41 19. Fail to provide training to an employee

13 42 involved in the process of making motor vehicle equity
13 43 line of credit agreements.

13 44 20. Pursue a deficiency judgment against a
13 45 borrower, except where the borrower prevented
13 46 repossession of the vehicle, damaged the vehicle, or
13 47 committed fraud.

13 48 21. Enter into a sale lease-back type of
13 49 arrangement.

13 50 22. Refuse a voluntary vehicle surrender which
14 1 shall not waive the borrower's notice of right to
14 2 redeem.

14 3 23. Violate any state law regulating advertising.

14 4 24. Use any collection tactics in violation of the
14 5 federal Fair Debt Collection Practices Act, 15 U.S.C.
14 6 } 1692, et seq., or any other applicable law.

14 7 25. Use any device or agreement, including an
14 8 agreement with an affiliated motor vehicle equity line
14 9 of credit lender, with the intent to obtain greater
14 10 charges than otherwise would be authorized by this
14 11 division.

14 12 26. Intentionally violate the provisions of this
14 13 division or any rule adopted by the superintendent.

14 14 27. Violate any applicable provision of chapter
14 15 537 or chapter 554, article 9, part 6.

14 16 Sec. _____. NEW SECTION. 536.44 CRIMINAL PENALTY.
14 17 A person who intentionally violates any provision
14 18 of this division is guilty of a serious misdemeanor.

14 19 Sec. _____. NEW SECTION. 536.45 VIOLATIONS ==
14 20 LICENSE SANCTIONS == CIVIL PENALTY.

14 21 1. The superintendent may, after notice and
14 22 opportunity for a hearing, suspend or revoke any
14 23 license issued pursuant to this division if the
14 24 superintendent finds that the motor vehicle equity
14 25 line of credit lender has knowingly, or through lack
14 26 of due care, done any of the following:

14 27 a. Engaged in conduct of a manner which would
14 28 warrant the denial of an application for a license.

14 29 b. Refused to permit the superintendent to make
14 30 any examination authorized by this division.

14 31 c. Failed to pay the annual license fee imposed by
14 32 this division, or an examination fee imposed by the
14 33 superintendent under the authority of this division.

14 34 d. Committed any fraudulent act.

14 35 e. Made a false statement in an application for a
14 36 license under this division or failed to give a true
14 37 reply to a question in the application.

14 38 f. Demonstrated incompetence or untrustworthiness
14 39 to act as a motor vehicle equity line of credit lender
14 40 in the reasonable opinion of the superintendent.

14 41 g. Violated any provision of this division or any
14 42 rule adopted hereunder or violated any other law in
14 43 the course of such motor vehicle equity line of credit
14 44 lender's dealings as a motor vehicle equity line of
14 45 credit lender.

14 46 2. If, after notice and opportunity for a hearing,
14 47 the superintendent finds that a person has violated
14 48 any provision of this division or any rule adopted
14 49 hereunder, the superintendent may take any or all of
14 50 the following actions:

15 1 a. Order the person to cease and desist violating
15 2 the provision of this division or rule.

15 3 b. Require the refund of any fees collected by
15 4 such person in violation of this division.

15 5 c. Order the person to pay the superintendent a
15 6 civil penalty of not more than one thousand dollars
15 7 for each transaction in violation of this division.

15 8 3. A motor vehicle equity line of credit lender
15 9 shall have ten business days to request a hearing upon
15 10 receiving a notice of intent to suspend or revoke a
15 11 license or issue a civil penalty from the
15 12 superintendent. If requested, a hearing shall be held
15 13 on written notice given at least twenty days prior to
15 14 the date of the hearing and shall be conducted in
15 15 accordance with chapter 17A.

15 16 4. The superintendent may enter into consent
15 17 orders at any time with any person to resolve any
15 18 matter arising under this division. A consent order
15 19 shall be signed by all parties to the consent order,
15 20 or a duly authorized representative, and shall
15 21 indicate agreement to the terms contained therein. A
15 22 consent order need not constitute an admission by any

15 23 person that any provision of this division, or any
15 24 rule or order adopted or issued hereunder, has been
15 25 violated, nor need it constitute a finding by the
15 26 superintendent that such person has violated any
15 27 provision of this division or any rule or order
15 28 adopted or issued under this division.

15 29 5. In cases involving extraordinary circumstances
15 30 requiring immediate action, the superintendent may
15 31 take any enforcement action authorized by this
15 32 division without providing the opportunity for a prior
15 33 hearing, but shall promptly afford a subsequent
15 34 hearing upon an application to rescind the action
15 35 taken which is filed with the superintendent within
15 36 twenty days after receipt of the notice of the
15 37 superintendent's emergency action.

15 38 6. Any person aggrieved by the conduct of a motor
15 39 vehicle equity line of credit lender under this
15 40 division in connection with the motor vehicle equity
15 41 line of credit lender's regulated activities may file
15 42 a written complaint with the superintendent, who may
15 43 investigate the complaint, and may pursue any other
15 44 remedy available to the person allowed by law.

15 45 7. In the course of the investigation of a
15 46 complaint, the superintendent may do any of the
15 47 following:

15 48 a. Subpoena witnesses.
15 49 b. Administer oaths.
15 50 c. Examine any individual under oath.
16 1 d. Subpoena the production of records, books,
16 2 papers, contracts, or other documents relevant to such
16 3 investigation.

16 4 8. If any person fails to comply with a subpoena
16 5 of the superintendent issued pursuant to subsection 7
16 6 or to testify concerning any matter about which the
16 7 person may be questioned under this division, the
16 8 superintendent may petition any court of competent
16 9 jurisdiction for enforcement.

16 10 9. The license of any motor vehicle equity line of
16 11 credit lender under this division who fails to comply
16 12 with a subpoena of the superintendent may be suspended
16 13 pending compliance with the subpoena.

16 14 10. The superintendent may investigate and enforce
16 15 any and all complaints filed by any person which are
16 16 not criminal in nature, which complaint relates to the
16 17 business of motor vehicle equity line of credit
16 18 lending.

16 19 11. The superintendent, after notice and
16 20 opportunity for hearing, may censure, suspend for a
16 21 period not to exceed twelve months, or bar a person
16 22 from any position of employment, management, or
16 23 control of any motor vehicle equity line of credit
16 24 lender, if the superintendent finds any of the
16 25 following:

16 26 a. That censure, suspension, or bar is in the
16 27 public interest and that the person has intentionally
16 28 committed or caused a violation of this division or
16 29 any rule or order of the superintendent.

16 30 b. Any of the following has occurred:
16 31 (1) The person has been convicted of, pled guilty
16 32 to, pled nolo contendere to, or received a deferred
16 33 judgment for any crime in this or any other state if
16 34 the crime involved any offense reasonably related to
16 35 the qualifications, functions, or duties of a person
16 36 engaged in the business in accordance with this
16 37 division.

16 38 (2) The person has been held liable in any civil
16 39 action by final judgment, or any order by any public
16 40 agency, if the judgment or order involved any offense
16 41 reasonably related to the qualifications, functions,
16 42 or duties of a person engaged in the business in
16 43 accordance with the provisions of this division.

16 44 12. Persons suspended or barred under subsection
16 45 11 are prohibited from participating in any business
16 46 activity of a motor vehicle equity line of credit
16 47 lender and from engaging in any business activity on
16 48 the premises where a motor vehicle equity line of
16 49 credit lender is conducting its business in this
16 50 state. This subsection shall not be construed to
17 1 prohibit a suspended or barred person from having
17 2 personal transactions processed by a motor vehicle
17 3 equity line of credit lender.

17 4 Sec. ____ NEW SECTION. 536.46 RULEMAKING ==
17 5 INSPECTION OF BOOKS AND RECORDS.

17 6 1. The superintendent may adopt reasonable rules
17 7 in accordance with chapter 17A for the administration
17 8 and enforcement of this division. A copy of any rule
17 9 adopted by the superintendent shall be mailed to each
17 10 licensee under this division at least thirty days
17 11 prior to the effective date of the rule.

17 12 2. To assure compliance with the provisions of
17 13 this division, the superintendent may examine the
17 14 relevant business books and records of any motor
17 15 vehicle equity line of credit lender. The
17 16 superintendent may charge and collect reasonable and
17 17 actual expenses for any compliance examination
17 18 conducted under this division.

17 19 3. The superintendent is authorized to examine
17 20 persons licensed under this division and persons
17 21 reasonably suspected by the superintendent of
17 22 conducting business which requires a license under
17 23 this division, including all relevant books, records,
17 24 and papers employed by such persons in the transaction
17 25 of the person's business, and to summon and examine
17 26 witnesses under oath concerning matters relating to
17 27 the business of such persons, or such other matters as
17 28 may be relevant to the discovery of violations of this
17 29 division, including the conduct of a business without
17 30 a license as required under this division.

17 31 4. All books and records required to be preserved
17 32 by this division or any rules of the superintendent or
17 33 required by any federal statute, regulation, or
17 34 regulatory guideline, as applicable to each motor
17 35 vehicle equity line of credit lender, shall be
17 36 preserved and made available to the superintendent as
17 37 provided in this division, for a period of twenty-four
17 38 months from the date the motor vehicle equity line of
17 39 credit agreement was executed or the date the last
17 40 payment was received, whichever is later. The motor
17 41 vehicle equity line of credit lender may cause any or
17 42 all records at any time in its custody to be
17 43 reproduced and or preserved by the lender or by any
17 44 other person who agrees in writing to submit its
17 45 operations to the examination of the superintendent to
17 46 the extent that such operations directly affect such
17 47 recordkeeping. Any reproduced or preserved record
17 48 kept by microphotographic process, or electronic or
17 49 mechanical data storage technique, shall have the same
17 50 force and effect as the original record and be
18 1 admitted into evidence equally with the original. All
18 2 records of a motor vehicle equity line of credit
18 3 lending business shall be maintained separately by the
18 4 motor vehicle equity line of credit lender from any
18 5 other business in which the motor vehicle equity line
18 6 of credit lender may engage.

18 7 Sec. ____ NEW SECTION. 536.47 PREEMPTION OVER
18 8 LOCAL ENACTMENTS == CONFLICTING PROVISIONS.

18 9 1. An incorporated municipality, city, or county
18 10 in this state shall not enact an ordinance or
18 11 resolution or adopt any rules relating to this
18 12 division. The provisions of any ordinance,
18 13 resolution, or rules of any municipality, city, or
18 14 county relative to motor vehicle equity line of credit
18 15 lending are superseded by the provisions of this
18 16 division.

18 17 2. Notwithstanding any other provision of the Code
18 18 to the contrary, this division shall apply to all
18 19 motor vehicle equity line of credit agreements made in
18 20 this state and shall govern in the event of any
18 21 conflict with any other provision of law.

18 22 Sec. ____ NEW SECTION. 536.48 APPLICABILITY.

18 23 The following entities, if incorporated under the
18 24 laws of this or any other state or federal law, may
18 25 engage in the business of motor vehicle equity line of
18 26 credit lending and shall not be required to be
18 27 licensed or regulated under this division:

- 18 28 1. A bank.
- 18 29 2. A savings and loan association.
- 18 30 3. A credit union.
- 18 31 4. An affiliate of a bank, savings and loan
18 32 association, or credit union.

18 33 Sec. ____ NEW SECTION. 536.49 BORROWER
18 34 INFORMATION.

18 35 A motor vehicle equity line of credit lender shall,
18 36 in addition to obtaining a statement of indebtedness
18 37 to determine a borrower's ability to repay a loan, and
18 38 all fees and expenses incident to the loan, obtain
18 39 certification from the borrower that the borrower
18 40 either does not have access to any form of
18 41 conventional financing such as through a bank, credit
18 42 union, or other source of funding, or in the event the
18 43 borrower has access to such forms or sources the
18 44 borrower elects not to utilize them and certifies the
18 45 ability to pay the indebtedness incurred. A motor
18 46 vehicle equity line of credit loan shall not be issued
18 47 by a lender unless the statement of indebtedness and
18 48 certification have been received by the lender. In
18 49 addition to the civil and criminal penalty provisions
18 50 of sections 536.44 and 536.45, a motor vehicle equity
19 1 line of credit lender who violates this section shall
19 2 be subject to the civil and criminal violation of
19 3 disclosure provisions of sections 537.5203 and
19 4 537.5302.>

19 5 #2. Page 1, line 19, by inserting after the word
19 6 <dollars.> the following: <A car title lender
19 7 regulated under chapter 536 or a motor vehicle equity
19 8 line of credit lender licensed pursuant to chapter 536
19 9 shall be prohibited from charging the fee authorized
19 10 pursuant to this paragraph.>

19 11 #3. Page 1, by inserting after line 25 the
19 12 following:

19 13 <Sec. _____. REPEAL. 2007 Iowa Acts, House File 5,
19 14 if enacted, is repealed.

19 15 Sec. _____. SHORT-TERM LENDING PRACTICES == STUDY
19 16 AND RECOMMENDATIONS.

19 17 The superintendent of banking shall conduct a study
19 18 to determine whether abuses by short-term lenders
19 19 providing alternative financing are occurring in this
19 20 state, and shall make recommendations regarding
19 21 whether statutory safeguards should be imposed on
19 22 short-term lenders. The recommendations shall include
19 23 an assessment of whether interest rate limitations
19 24 should be imposed on any short-term lenders. The
19 25 superintendent shall submit a report summarizing the
19 26 results of the study and containing the
19 27 recommendations of the study to the members of the
19 28 general assembly by January 1, 2008.>

19 29 #4. Title page, by striking lines 1 and 2 and
19 30 inserting the following: <An Act relating to consumer
19 31 lending practices and financial transactions,
19 32 providing for changes regarding the authority of
19 33 creditors and credit unions in consumer credit or
19 34 credit union transactions, providing for the licensing
19 35 and regulation of motor vehicle equity line of credit
19 36 lenders and for associated fees, providing for a
19 37 short-term lending practices study, and including a
19 38 repeal.>

19 39 #5. By renumbering as necessary.

19 40

19 41

19 42

19 43 _____
19 43 TOMENGA of Polk

19 44 HF 500.704 82

19 45 rn/gg/7966